

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-1
INTRODUCTION**

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1240-5-1-.01 APPEALS.

(1) General Rule.

- (a) When an appellant is dissatisfied with any adverse administrative action taken by the Department of Human Services, including failure to act upon a request or application within required time frames, which is within the discretion and control of the Department of Human Services, unless otherwise directed or limited by law or regulation, or unless waived, he/she has the right to timely appeal for a fair hearing conducted by an impartial Department official or by a hearing official with the Department of State, at the designation of the Commissioner of Human Services. (Proceedings involving Families First and Food Stamp Intentional Program Violations are set forth under Department of Human Services State Rules at Chapters 1240-5-14 and 1240-5-15.)

(b) Vocational Rehabilitation Services Appeals.

1. Appeals of decisions of the Division of Rehabilitation Services affecting Vocational Rehabilitation Services appellants and the designation of a hearing official are specifically governed by State Rule 1240-5-1-.05.
2. The conduct of appeals for the Vocational Rehabilitation Program under this Chapter and under the Administrative Procedures Act shall be subject to the procedural provisions contained in Rule 1240-5-1-.05 because of specific provisions of Federal law and regulations governing that program, and the provisions of this Chapter and the Administrative Procedures Act are applicable only to the extent that there is no conflict with the provisions of Chapter 1240-5-1-.05, and any conflicting provisions of this Chapter and the Administrative Procedures Act shall be resolved by reference to Chapter 1240-5-1-.05.

(c) Summer Food Service Program pursuant to 42 U.S.C. § 1761 and 7 C.F.R. § 225.13.

1. Appeals of decisions of the Department of Human Services affecting the Summer Food Service Program and the designated hearing official are specifically governed by the Federal enabling statute and rules found at 42 U.S.C. § 1761 and 7 C.F.R. § 225.13.
2. The conduct of appeals for the Summer Food Service Program under this Chapter and under the Administrative Procedures Act shall be subject to the specific provisions of Federal law and regulations governing that program, and the provisions of this Chapter and the Administrative Procedures Act are applicable only to the extent that there is no conflict with the provisions of 42 U.S.C. § 1761 and 7 C.F.R. § 225.13.

(d) Child and Adult Care Food Program pursuant to 42 U.S.C. § 1766 and 7 C.F.R. § 226.6.

(Rule 1240-5-1-.01, continued)

1. Appeals of decisions of the Department of Human Services affecting the Child and Adult Care Food Program and the designated hearing official are specifically governed by the Federal enabling statute and rules found at 42 U.S.C. § 1766 and 7 C.F.R. § 226.6.
 2. The conduct of appeals for the Child and Adult Care Food Program under this Chapter and under the Administrative Procedures Act shall be subject to the specific provisions of Federal law and regulations governing that program, and the provisions of this Chapter and the Administrative Procedures Act are applicable only to the extent that there is no conflict with the provisions of 42 U.S.C. § 1766 and 7 C.F.R. § 226.6.
- (e) Child Care Agency Licensing Appeals.
1. Child care agency appeals of adverse administrative actions by the Department pursuant to T.C.A. § 71-3-509 involving denials, revocations or restrictions of a child care agency's license and civil penalties or safety plans involving child care agencies are heard only by the Child Care Agency Board of Review pursuant to T.C.A. §§ 71-3-509—510 and Chapters 1240-4-5 and 1240-5-13.
 - (2) When any party to an adverse administrative action for child support or related administrative enforcement of child support is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, that is listed in T.C.A. §§ 36-5-1001 and 36-5-1002, or which is otherwise required to have due process procedures for administrative actions affecting the party, he/she has the right to timely appeal for a fair hearing by an impartial Department official.
 - (3) Administrative actions taken by the Department of Human Services pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.

Authority: T.C.A. §§ 4-5-101, 4-5-202, 4-5-301, 36-5-1001, 36-5-1002, 71-1-105(12) and 71-1-111.
Administrative History: Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective April 19, 1983. Repeal and new rule filed September 30, 2004; effective December 14, 2004. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-1-.02 AGENCY RULE-MAKING.

- (1) The rules of procedure and practice to determine eligibility for the programs of assistance and services provided by the Tennessee Department of Human Services are not valid or effective against any person or party, nor may they be invoked by the agency for any purpose, until all of the requirements for rulemaking as set forth by the Tennessee Uniform Administrative Procedures Act (as amended) have been met.
- (2) "Rule" means each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. "Rule" includes the amendment or repeal of a prior rule, but does not include:
 - (a) Statements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public;
 - (b) Declaratory order issued pursuant to T.C.A. § 4-5-223;
 - (c) Intra-agency memoranda;
 - (d) General policy statements which are substantially repetitious of existing law.

(Rule 1240-5-1-.03, continued)

Authority: TCA §§ 4-5-102(10) and 4-5-207. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Repeal and new rule filed September 30, 2004; effective December 14, 2004.

1240-5-1-.03 LEGAL BASE.

(1) Basis for hearings.

- (a) Fair hearings providing due process for the resolution of appeals of decisions of the Tennessee Department of Human Services affecting persons receiving services or assistance or child support services from the Department are required by Federal and/or State law, regulations and *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 2011 (1970) for:

1. The Food Stamp program at 7 U.S.C. §§ 2020 and 2025 and at 7 C.F.R. § 273.15;
2. Temporary Assistance to Needy Families (TANF/Families First) pursuant to Title IV-A of the Social Security Act [42 U.S.C. § 601 et seq.] and 45 C.F.R. § 205.10;
3. Medicaid/TennCare services under Titles XVI and XIX of the Social Security Act, pursuant to 42 U.S.C. § 1396 and 42 C.F.R. § 431.200 et seq.;
4. Social Services in Title XX of the Social Security Act, pursuant to 42 U.S.C. § 1397 and 42 U.S.C. § 9901 and Federal regulations applicable to individual programs;
5. Services for the blind pursuant to the Randolph-Sheppard Act pursuant to 20 U.S.C. § 107b(6) and 34 C.F.R. § 395 et seq.;
6. Vocational rehabilitation services pursuant to the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701 et seq., 720 et seq., and 722 et seq. and 34 C.F.R. § 361 et seq.;
7. Child support services pursuant to Title IV-D of the Social Security Act at 42 U.S.C. § 651 et seq. and in Tennessee Code Annotated Title 36, Chapter 5, Part 10;
8. Summer Food Service Program pursuant to 42 U.S.C. § 1761 and 7 C.F.R. § 225.13;
9. Child and Adult Care Food Program pursuant to 42 U.S.C. § 1766 and 7 C.F.R. § 226.6;
10. Low Income Home Energy Assistance Program and Weatherization Assistance Program pursuant to 42 U.S.C. § 8624 and 42 U.S.C. § 6851 and Tennessee Department of Human Services Rules 1240-7-1 and 1240-7-2;
11. Child care agency report card assessments pursuant to Chapter 1240-4-7;
12. Child care agency license probations and suspensions pursuant to T.C.A. § 71-3-509;
13. Criminal history exclusions for persons having access to children in child care agencies or having access to adults in adult day care centers pursuant to T.C.A. §§ 71-2-403(a) and 71-3-509(e) and (f);
14. Adult day care licensing actions pursuant to T.C.A. § 71-2-401 et seq.; and
15. Any other programs to which due process requirements may apply.

- (b) Authority for Contested Case Hearings.

(Rule 1240-5-1-.03, continued)

1. The Commissioner of Human Services has authority to conduct or cause to be conducted hearings for fact determinations that the Department is authorized or required to make. The commissioner, and any officer or employee of the Department upon written authorization from the commissioner, has the power to administer oaths and affirmations, take depositions, issue subpoenas, and require the production of any books and records that may be necessary. Hearings involving the programs providing services and assistance from the Department of Human Services shall be conducted pursuant to the contested case provisions of the Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-301 et seq., except as otherwise required by law or regulation.
 2. The Department of Finance and Administration has placed responsibility for conducting contested case proceedings for Title XIX cases involving the determination of eligibility for the TennCare/Medicaid program in the Commissioner of the Department of Human Services.
 3. The Commissioner of Human Services is specifically authorized to designate a hearing official in the Department of Human Services pursuant to T.C.A. § 71-1-111 or a hearing official of the Department of State Administrative Procedures Division, to conduct contested case proceedings.
- (2) Title VI of the Civil Rights Act of 1964, 42 USCA § 2000d, prohibits discrimination in the provision of assistance or services to applicants, recipients, or beneficiaries because of their race, color, or national origin.
 - (3) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. § 4-5-101 et seq., and T.C.A. § 4-5-201 et seq. provides for the use of uniform procedures for agency rulemaking.
 - (4) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. § 4-5-301 et seq., requires the use of uniform procedures for the conduct of hearings on appeals held by all state agencies of Tennessee.

Authority: T.C.A. §§ 4-5-101, 4-5-201 et seq., 4-5-301, 36-5-701 et seq., 36-5-1001—1003, 71-1-105(12), 71-1-111 and 71-3-151 et seq.; 7 U.S.C. §§ 2014, 2015, 2020(e)(10) and 2025; 20 U.S.C. § 107b; 29 U.S.C. §§ 701 et seq., 720 et seq. and 722 et seq.; 42 U.S.C. § 601 et seq.; 42 U.S.C. § 651 et seq.; 42 U.S.C. § 1396; 42 U.S.C. § 1397; 42 U.S.C. §§ 1761 and 1766; 42 U.S.C. § 6851; 42 U.S.C. § 8624(b)(13); 42 U.S.C. § 9901; 34 C.F.R. § 361 et seq.; and 34 C.F.R. § 395 et seq. and 10 C.F.R. § 440.1. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Repeal and new rule filed September 30, 2004; effective December 14, 2004. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-1-.04 SCOPE.

- (1) Subject to any superseding Federal or State law, and specifically subject to the superseding provisions of 1240-5-1-.01(1)(b), (c), (d) and (e), these rules shall govern contested case proceedings before the Department of Human Services and will be relied upon by hearing officials in all contested cases utilizing hearing officials.
- (2) Any procedural provision of these rules, which is not subject to a superseding Federal or State law, may be suspended where clearly warranted in the interest of justice.
- (3) In any situation that arises that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

(Rule 1240-5-1-.03, continued)

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-1-105(12) and 71-1-111; 29 U.S.C. §§ 701 et seq., 720 et seq. and 722 et seq.; 42 U.S.C. §§ 1761 and 1766; 34 C.F.R. § 361 et seq.; and 7 C.F.R. §§ 225.13 and 226.6. **Administrative History:** Original rule filed January 20, 1984; effective February 19, 1984. Amendment filed April 30, 1985; effective July 14, 1985. Repeal and new chapter filed September 30, 2004; effective December 14, 2004. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-1-.05 ADMINISTRATIVE REVIEW IN VOCATIONAL REHABILITATION SERVICES.

- (1) Any applicant or eligible individual who is dissatisfied with any decision made by any staff of the Designated State Unit, as defined in 34 CFR § 361.5(14)(i), more specifically, the Division of Rehabilitation Services, concerning the furnishing or denial of rehabilitation services may request a review of the decision by means of an Informal Administrative Review, Mediation, or a Fair Hearing in accordance with the Federal Rehabilitation Act of 1973, as amended, 29 USCA § 722 et seq.
- (2) The individual must be made aware of his/her rights as follows:
 - (a) the right to an Informal Administrative Review
 - (b) the right to pursue mediation
 - (c) the availability of the Client Assistance Program (CAP)
 - (d) the right to a formal fair hearing.
- (3) Notification of these rights and the availability of CAP should be given:
 - (a) at the time of application;
 - (b) at the time the individual is assigned to a category in Tennessee's order of selection, provided that Tennessee has established an order of selection under 34 C.F.R. § 361.36;
 - (c) when the Individualized Plan for Employment (IPE) is developed; and
 - (d) when services are being reduced, suspended or terminated.
- (4) During any appeal process (Informal Administrative Review, Mediation or Fair Hearing), the applicant or eligible individual must be advised that he/she has the right to be represented by counsel or other advocate selected by the individual and with an opportunity to submit evidence and other information that supports his/her position.
- (5) Continuation or Cessation of Services During Reviews and Appeals.
 - (a) When an applicant or eligible individual requests an Informal Administrative Review, Mediation or Fair Hearing of a decision to cease a service, there shall not be a suspension, reduction or termination of services being provided to an applicant or eligible individual, including evaluation and assessment services and Individualized Plan for Employment (IPE) development, pending a final determination of the Fair Hearing, Mediation or Informal Administrative Review process unless the individual, or as appropriate, the individual's representative, so requests or the Rehabilitation Services Division has evidence that the service(s) at issue were obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the individual or his/her representative.
- (6) An appeal of an Informal Administrative Review, Mediation or a request for a Fair Hearing will be accepted only if filed within the required time limit listed in this section, unless good cause can be

shown as to why the appeal or request for a Fair Hearing could not be filed within the required time limit.

(7) Informal Administrative Review.

An Informal Administrative Review is an informal procedure through which the Division provides an opportunity to an applicant or eligible individual of Vocational Rehabilitation Services and/or his/her representative, to express and seek resolution for his/her dissatisfaction with an action of the Division.

- (a) The individual/applicant must file a request for an Informal Administrative Review, orally or in writing, within thirty (30) calendar days of the date on the notice of the contested action.
- (b) Within five (5) working days of the request in 1240-5-1-.05(7)(a), except when disciplinary sanctions are imposed against the applicant/individual in a Division owned or operated facility, a supervisor shall contact the applicant/individual or as appropriate his/her representative to schedule the Informal Administrative Review. The applicant or individual or, as appropriate, his/her representative shall be informed in writing of the scheduled review date and site. When disciplinary sanctions are imposed against the applicant/individual in a Division owned or operated facility the supervisor shall contact the applicant/individual or, as appropriate, his/her representative immediately to schedule the review.
- (c) The Informal Administrative Review shall be held within fifteen (15) working days from the date of the original request, and within twenty-four (24) hours of the date of the receipt of notice for disciplinary sanctions in a Division owned or operated facility.
- (d) Informal Administrative Reviews are held by the regional supervisory staff of the Division. An Informal Administrative Review shall be conducted during regular agency working hours and located at a time and place convenient to the individual and staff.
- (e) The recommendation of the review shall be in writing and address all issues involved. Within ten (10) working days of the review, all parties involved in the review shall receive written notice of the recommendation.
- (f) Applicants and individuals can be served more quickly using the Informal Administrative Review process. However, under no circumstance should the Informal Administrative Review process be used to deny, delay, discourage, or interfere with the individual exercising his/her right to pursue Mediation or the formal Fair Hearing process. The Division shall make every effort to resolve individual complaints at the Informal Administrative Review Process level.
- (g) Applicants and individuals may be represented by the representative or legal counsel of his/her choosing.

(8) Mediation.

- (a) Mediation may be requested orally or in writing at any point as a part of due process procedures prior to a formal Fair Hearing. Mediation may be requested without first completing the Informal Administrative Review. Mediation is voluntary on the part of both parties (the Division or the individual/applicant). Mediation shall not be used as a process to deny or delay the right of an individual to a Fair Hearing or any other rights. The State shall bear the cost of the Mediation process with the exception of the costs related to the representation of an applicant or eligible individual.
- (b) Requirements for Mediation include the following:

(Rule 1240-5-1-.05, continued)

1. A qualified and impartial mediator as defined in 34 CFR § 361.5(b)(43) must conduct the Mediation process. The applicant/individual has the right to choose the mediator, as available, from a list of mediators maintained by the Division of Rehabilitation Services.
2. Mediation should be scheduled within seven (7) working days of the request for mediation, subject to availability of a suitable mediator. The actual mediation should take place within fifteen (15) working days of the request, subject to availability of a suitable mediator.
3. The mediation should take place at a location convenient to all parties.
4. Discussions that take place during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing under 1240-5-1-.05(9) of these rules or civil proceeding under 1240-5-1-.05(10). The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.
5. Any agreement reached by the parties shall be set forth in a written mediation agreement, but if agreement is not reached, the applicant/individual has the right to proceed to a Fair Hearing.
6. Applicants and individuals may be represented by the representative or legal counsel of his/her choosing.

(9) Fair Hearing.

- (a) A Fair Hearing is a formal procedure whereby an applicant or individual who is dissatisfied with any decision made by the Department of Human Services Vocational Rehabilitation Services Division staff concerning the furnishing or denial of services is provided a formal hearing by an Impartial Hearing Officer (IHO) to review the determination.
- (b) An individual may request a Fair Hearing orally, or by formally filing Form HS-0008 with the counselor, the regional/district/local supervisor's office, or facility administrator. The date the request was made must be documented on Form HS-0008 by Division staff.
- (c) The applicant/individual or his/her representative is allowed thirty (30) calendar days after the date of the Informal Administrative Review Written Recommendation or Mediation to request a Fair Hearing, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit.
- (d) When the applicant or individual elects not to utilize the Informal Administrative Review or Mediation process, the request for the Fair Hearing must be filed within thirty (30) calendar days of the notification by the Division to the applicant for, or recipient of services, of the contested action, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit. Time is measured from the date of the notice.
- (e) The requirements for the fair hearing are as follows:
 1. The Fair Hearing is to be conducted by an Impartial Hearing Officer (IHO) as defined in 34 CFR § 361.5(b)(25) and is to be held within sixty (60) days of a request by the applicant or individual, unless informal resolution is achieved prior to the sixtieth (60th) day or the parties agree to a specific extension of time. The sixty-day (60) period begins when the request is made orally or in writing. In either event, the date that the request is made for a Fair Hearing must be documented on Form HS-0008.

(Rule 1240-5-1-.05, continued)

2. The applicant or individual or, if appropriate, the individual's representative shall be afforded an opportunity to present evidence, information, and witnesses to the Impartial Hearing Officer; to be represented by counsel or other appropriate advocate; and to examine/cross examine all witnesses and other relevant sources of information and evidence.
3. The Impartial Hearing Officer shall make a decision based on the provisions of the approved State Plan and the Rehabilitation Act of 1973, as amended, 29 USCA § 701 et seq.; Federal Vocational Rehabilitation regulations at 34 CFR § 361 et seq. and State Regulations; and policies that are consistent with the Federal requirements. The Impartial Hearing Officer shall provide the decision in writing, to the applicant or individual, or as appropriate to his/her representative, and to the Assistant Commissioner of the Rehabilitation Services Division. The Impartial Hearing Officer's decision, including findings and grounds for the decision, shall be entered within thirty (30) calendar days of the date of the hearing.
4. The Division of Rehabilitation Services shall maintain a list of qualified Impartial Hearing Officers who are knowledgeable in law (including regulations) relating to the provision of Vocational Rehabilitation services. The names of the Impartial Hearing Officers will be identified jointly by the Designated State Unit, as defined in 34 CFR § 361.5(14)(i), more specifically, the Rehabilitation Services Division and members of the State Rehabilitation Council (SRC).
5. The selection of the Impartial Hearing Officer to hear a particular case will be done on a random basis by the Commissioner's Designee for Hearings and Appeals or by agreement between the Assistant Commissioner of the Rehabilitation Services Division and the applicant or eligible individual.
6. The Impartial Hearing Officer's decision is final, except either party that is dissatisfied with the decision of the Impartial Hearing Officer may request, in writing, a review of the decision of the Impartial Hearing Officer within twenty (20) calendar days after entry and mailing of the decision. If the twentieth (20th) day falls on a weekend or holiday, the request must be filed by the following workday. The Commissioner, or the Commissioner's Designee in the Department of Human Services' Hearings and Appeals Unit will conduct the review of the decision of the Impartial Hearing Officer. The Commissioner cannot delegate the responsibility to make the independent final decision to any officer or employee of the Designated State Unit, as defined in 34 CFR § 361.5(14)(i), more specifically the Rehabilitation Services Division, including the Assistant Commissioner of the Rehabilitation Services. During the Commissioner/Commissioner's Designee's review each party shall be provided an opportunity for submission of additional evidence and information relevant to a final decision concerning the matter under review.
7. The Commissioner/Commissioner's Designee in the Hearings and Appeals Unit may not overturn or modify the decision, or part of a decision, of an Impartial Hearing Officer that supports the position of the individual unless it is concluded that, based on clear and convincing evidence, the decision of the Impartial Hearing Officer is clearly erroneous because it is contrary to the approved State Plan; the Rehabilitation Act, as amended, 29 USCA § 701 et. seq.; Federal Vocational Rehabilitation Regulations; State Regulations or policies that are consistent with Federal requirements identified in Title I of the Rehabilitation Act, as amended.
8. Within thirty (30) days of the individual's request for administrative review of the Impartial Hearing Officer's decision as described in 1240-5-1-.05(9)(e)6, the

(Rule 1240-5-1-.05, continued)

Commissioner/ Commissioner's Designee in the Hearings and Appeals Unit, shall render an independent final decision following a review of the entire hearing record and provide a full report in writing of the decision, including the findings and the statutory regulation or policy grounds for the decision to the applicant or individual or, if appropriate, the individual's representative and to the Vocational Rehabilitation Division staff involved in the Fair Hearing.

9. Reasonable time extensions may be provided for good cause shown at the request of a party or at the request of both parties.
10. The Impartial Hearing Officer's decision will be the final agency decision, if there is not a request for administrative review of the Impartial Hearing Officer's decision to the Commissioner/Commissioner's Designee within twenty (20) calendar days of the entry and mailing of the Impartial Hearing Officer's decision as provided in 1240-5-1-.05(9)(e)6 above.

(10) Petition for Judicial Review In Chancery Court Or Civil Action.

- (a) Any party who is aggrieved by a decision of the Impartial Hearing Officer may seek relief as follows:
 1. A party aggrieved by the decision of the Impartial Hearing Officer may file a petition for judicial review in Chancery Court under T.C.A. § 4-5-322 within sixty (60) days after the Impartial Hearing Officer's decision becomes final; or
 2. A party aggrieved by the decision of the Impartial Hearing Officer may file a petition for judicial review in Chancery Court under T.C.A. § 4-5-322 within sixty (60) days of the entry and mailing of the Commissioner/Commissioner's Designee's independent final administrative review decision of the Impartial Hearing Officer's decision, where the individual sought review of the Impartial Hearing Officer's decision as provided in 1240-5-1-.05 (9)(e) 6; or
 3. A party aggrieved by the decision of the Impartial Hearing Officer may file a civil action within the time period provided for bringing a civil action after the entry and mailing of the Commissioner/Commissioner's Designee's independent final administrative review decision of the Impartial Hearing Officer's decision, where the individual sought review of the Impartial Hearing Officer's decision as provided in 1240-5-1-. 05(9)(e)6. The civil action may be brought in any State court of competent jurisdiction or United States district court of competent jurisdiction without regard to the amount of controversy.
- (b) The decision of the Impartial Hearing Officer, or if reviewed, the independent final administrative review decision of the Commissioner/Commissioner's Designee shall be implemented regardless of whether a party has filed a petition for judicial review in Chancery Court as provided in 1240-5-1-.05(10)(a)1 or 2 above or a civil action as provided in 1240-5-1-.05(10)(a)3.
- (c) In a civil action for judicial review, as provided in 1240-5-1-.05(10)(a)3 above, the Court:
 1. Receives the records related to the formal Fair Hearing process and the Commissioner/Commissioner's Designee's administrative review of the Impartial Hearing Officer's decision;
 2. Hears additional evidence at the request of a party; and

(Rule 1240-5-1-.05, continued)

3. Bases its decision on the preponderance of the evidence, granting the relief the Court determines to be appropriate under the facts and the law.
- (11) Vocational Rehabilitation Services fair hearings shall be conducted in conformity with the Federal Rehabilitation Act, 29 USCA § 722(c), 34 C.F.R. §361.57, and the Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. § 4-5-301 et seq. State Rule 1240-5-1-.05 shall govern the procedures for review of service decisions in the Vocational Rehabilitation Program. Any conflict between the Department of Human Services rules governing contested case proceedings and the Tennessee Uniform Administrative Procedures Act, as amended, shall be controlled by the Department of Human Services Rules at 1240-5-1-.05.

Authority: TCA §§4-5-105, 49-11-601 et seq., and 71-1-105; 29 USCA §701 et seq., 29 USCA 705, 29 USCA 720 et seq., and 29 USCA 722(c); 34 CFR §§361.5 and 34 CFR 361.57; and 66 FR 4380. **Administrative History:** Original rule filed September 30, 2004; effective December 14, 2004.